

COUNTY COUNCIL
OF
HARFORD COUNTY, MARYLAND

BILL NO. 07-02

Introduced by Council President Boniface at the request of the County Executive

Legislative Session Day No. 07-03

Date: January 16, 2007

A BILL approving and providing for a multi-year Installment Purchase Agreement by Harford County, Maryland to acquire real property and improvements in approximately 4.251 acres of land, more or less, located on the easterly side of Commerce Road, south of Jarrettsville Road in Forest Hill, Maryland, described as Lot No. Q-4 on a plat entitled "Revised Final Plat Section II Lots Q-4 and N-4 Forest Hill Industrial Airpark, Inc. (hereinafter the "Property") from Q-4, LLC or any other owner thereof for a maximum purchase price of \$2,360,000 providing that the County's obligation to pay such purchase price and interest thereon shall be a full faith and credit general obligation of the County; providing for the levying of taxes for such payments; authorizing the County Executive to make modifications in such Agreement under certain circumstances; providing for and determining various matters in connection therewith.

By the Council, January 16, 2007

Introduced, read first time, ordered posted and public hearing scheduled

on: February 20, 2007
at: 7:30pm

By Order: Barbara J. O'Connor, Council Administrator

PUBLIC HEARING

Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, a public hearing was held on February 20, 2007, and concluded on February 20, 2007.

Barbara J. O'Connor, Council Administrator

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [BRACKETS] indicate matter deleted from existing law. Underlining indicates language added to Bill by amendment. Language lined through indicates matter stricken out of Bill by amendment.

RECITALS

In accordance with the provisions of Section 524 of the Charter of Harford County (the "Charter"), the Annual Budget and Appropriation Ordinance of Harford County, Maryland (the "County") the Budget for fiscal year 2007, Bill No. 06-10, adopted on May 16, 2006 (the "Budget Ordinance") includes projects permitting the County to enter into agreements to acquire lands located within the County for park and recreation purposes, which Budget Ordinance was adopted by the County Council of Harford County, Maryland (the "County Council"), in accordance with the Charter.

Section 520 of the Charter provides that "any contract, lease or other obligation in excess of three thousand dollars (\$3,000) requiring the payment of funds from the appropriations of a later fiscal year shall be authorized by legislative act", and Section 524 of the Charter provides that the County may incur debt.

Attached to this Bill as Exhibit A is a proposed Agreement of Sale to enable the County to acquire the Property for \$2,360,000, of which \$1,700,000 will be paid at closing and \$660,000 will be paid by the County with 5% interest on the unpaid balance on the first anniversary of the Closing Date.

The County has now determined to enter into an Agreement with Q-4, LLC, or any other person who is or becomes the owner of all or any portion of the Property (hereinafter defined) prior to execution and delivery of such Agreement, in order to acquire the real property and improvements in the Property, containing approximately 4.251 acres, more or less, in Forest Hill, Maryland within the County for an aggregate purchase price not in excess of \$2,360,000, plus interest thereon, at the rate of 5% on the unpaid balance upon the terms and conditions hereinafter set forth.

NOW, THEREFORE:

1 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF HARFORD
2 COUNTY, MARYLAND, That

3 (a) Harford County, Maryland (the "County") shall enter into an Agreement
4 (the "Agreement") with Q-4, LLC, or any person who is or becomes the owner of all or any
5 portion of the Property (hereinafter defined) prior to the execution and delivery of the Agreement
6 (the "Seller") in order to acquire the real property and improvements in approximately 4.251
7 acres of land, more or less, located on the easterly side of Commerce Road, south of Jarrettsville
8 Road in Forest Hill, Maryland, described as Lot No. Q-4 on a plat entitled "Revised Final Plat
9 Section II Lots Q-4 and N-4 Forest Hill Industrial Airpark, Inc., within the County (the "Land"),
10 for an aggregate purchase price not in excess of \$2,360,000 (the "Purchase Price"), plus interest
11 thereon as hereinafter provided;

12 (b) The Agreement shall be in substantially the form attached hereto as
13 Exhibit A and made a part hereof, and in such form the Agreement is hereby approved as to form
14 and content. The Agreement shall be dated as of the date of its execution and delivery by the
15 County and the Seller (the "Closing Date");

16 (c) A portion of the Purchase Price, in the amount of \$1,700,000, shall be paid in
17 cash on the Closing Date. The balance of the Purchase Price of \$660,000 shall be paid to the
18 Seller on the first anniversary of the Closing Date;

19 (d) Interest on the unpaid balance of the Purchase Price at 5% per annum shall
20 accrue from the Closing Date and shall be payable at least annually in each year on the
21 anniversary of the Closing Date until the entire Purchase Price is paid. Interest shall be
22 calculated on the basis of a 360-day year of twelve 30-day months;

1 (e) The County's obligation to make payments of the Purchase Price under the
2 Agreement and to pay interest thereon is and shall be a general obligation of the County and is
3 and shall be made upon its full faith and credit.

4 SECTION 2. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
5 HARFORD COUNTY, MARYLAND,

6 That it is hereby found and determined that:

7 (a) The acquisition of the Property as set forth in Section 1 of this Bill and in
8 the form of the Agreement attached hereto as Exhibit A is in the best interests of the County;

9 (b) The Agreement is a contract providing for the payment of funds at a time
10 beyond the fiscal year in which it is made and requires the payment of funds from appropriations
11 of later fiscal years;

12 (c) Funds for the payment of the Purchase Price under the Agreement are
13 included in the Budget Ordinance, As Amended;

14 (d) The County shall acquire the Property for its own use;

15 (e) The Purchase Price is within the legal limitation on the indebtedness of the
16 County as set forth in Article 25A, § 5(P) of the Annotated Code of Maryland;

17 (f) The cost of acquiring the Property is equal to the Purchase Price;

18 (g) The only practical way to acquire the development rights in the Land is by
19 private negotiated agreement between the County and the Seller.

20 SECTION 3. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
21 HARFORD COUNTY, MARYLAND, That the Agreement shall be signed by the County
22 Executive of the County (the "County Executive") by his manual signature, and the Agreement
23 shall bear the corporate seal of the County, attested by the manual signature of the Director of
24 Administration of the County (the "Director of Administration"). In the event that any officer

1 whose signature shall appear on the Agreement shall cease to be such officer before the delivery
2 of the Agreement, such signature shall nevertheless be valid and sufficient for all purposes, the
3 same as if such officer had remained in office until delivery.

4 SECTION 4. AND BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
5 HARFORD COUNTY, MARYLAND, That the County Executive and the Treasurer are hereby
6 authorized, prior to execution and delivery of the Agreement, to make such changes or
7 modifications in the form of the Agreement attached hereto as Exhibit A as may be required or
8 deemed appropriate by them in order to accomplish the purpose of the transactions (including,
9 but not limited to, determining the portion of the Purchase Price to be paid in cash on the Closing
10 Date and establishment of interest and principal payment dates in each year that the Agreement is
11 outstanding) authorized by this Bill; provided that such changes shall be within the scope of the
12 transactions authorized by this Bill and the execution of the Agreement by the County Executive
13 shall be conclusive evidence of the approval by the County Executive of all changes or
14 modifications in the form of the Agreement and shall thereupon become binding upon the County
15 in accordance with its terms, as authorized by Section 524 of the Charter and as provided for in
16 this Bill.

17 SECTION 5. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
18 HARFORD COUNTY, MARYLAND, That the County Executive, the Director of
19 Administration, the Treasurer of the County and other officials of the County are hereby
20 authorized and empowered to do all such acts and things and to execute, acknowledge, seal and
21 deliver such documents and certificates as the County Executive may determine to be necessary
22 to carry out and comply with the provisions of this Bill.

23 SECTION 6. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
24 HARFORD COUNTY, MARYLAND, That the Treasurer of the County is hereby designated

1 and appointed as registrar and paying agent for the Agreement (the "Registrar"). The Registrar
2 shall maintain, or cause to be maintained, books of the County for the registration and transfer of
3 ownership of the Agreement. In addition, the County may, from time to time, designate and
4 appoint the Department of the Treasury of the County, any officer or employee of the County or
5 one or more banks, trust companies, corporations or other financial institutions to act as a
6 substitute or alternate registrar or paying agent for the Agreement, and any such substitute or
7 alternate shall be deemed to be the Registrar or an alternate Registrar for all purposes specified in
8 the resolution appointing such substitute or alternate. Any such appointment shall be made by
9 the County Council by resolution and the exercise of such power of appointment, no matter how
10 often, shall not be an exhaustion thereof.

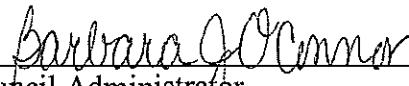
11 SECTION 7. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
12 HARFORD COUNTY, MARYLAND, That for the purpose of paying the installments of the
13 Purchase Price when due and payable and the interest on the unpaid portion of the Purchase Price
14 when due and payable, there is hereby levied, and there shall hereafter be levied in each fiscal
15 year that any portion of the Purchase Price payable under the Agreement remains outstanding, *ad*
16 *valorem* taxes on real and tangible personal property and intangible property subject to taxation
17 by the County, without limitation of rate or amount, and, in addition, upon such other intangible
18 property as may be subject to taxation by the County within limitations prescribed by law, in an
19 amount sufficient, and other available funds, to pay any installment of the Purchase Price under
20 the Agreement maturing during the succeeding year and to pay the annual interest on the
21 outstanding balance of the Purchase Price until all of the Purchase Price under the Agreement and
22 such interest have been paid in full; and the full faith and credit and the unlimited taxing power
23 of the County are hereby irrevocably pledged to the punctual payment of the Purchase Price
24 under the Agreement and the interest on the unpaid balance of the Purchase Price as and when

1 Price under the Agreement and the interest on the unpaid balance of the Purchase Price as and
2 when the same respectively become due and payable.

3 SECTION 8. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF
4 HARFORD COUNTY, MARYLAND, That this Bill shall take effect sixty (60) calendar days
5 after it becomes law.

6 EFFECTIVE: April 22, 2007

The Council Administrator of the Council does
hereby certify that fifteen (15) copies of this Bill are
immediately available for distribution to the public
and the press.



Council Administrator

HARFORD COUNTY BILL NO. 07-02

Brief Title Installment Purchase – Forest Hill Industrial Park

is herewith submitted to the County Council of Harford County for enrollment as being the text as finally passed.

CERTIFIED TRUE AND CORRECT

Barbara J. O'Connor
Council Administrator

Date February 20, 2007

ENROLLED

Billy Bonfante
Council President

Date February 20, 2007

BY THE COUNCIL

Read the third time.

Passed: LSD 07-06

Failed of Passage: _____

By Order

Barbara J. O'Connor
Council Administrator

Sealed with the County Seal and presented to the County Executive for approval this 21st day of February, 2007 at 3:00 p.m.

Barbara J. O'Connor
Council Administrator



BY THE EXECUTIVE

David R. Craig
COUNTY EXECUTIVE

APPROVED: Date February 22, 2007

BY THE COUNCIL

This Bill No. 07-02 having been approved by the Executive and returned to the Council, becomes law on February 22, 2007.

EFFECTIVE DATE: April 22, 2007

Barbara J. O'Connor
Barbara J. O'Connor, Council Administrator

EXHIBIT A

Agreement of Sale

1
2
3
4

HARFORD COUNTY, MARYLAND
 220 South Main Street
 Bel Air, Maryland 21014

THIS AGREEMENT OF SALE ("Agreement"), made and executed in duplicate, this _____ day of _____, 2007, by and between Q-4, LLC, a limited liability company of the State of Maryland, sometimes hereinafter referred to as "Seller", party of the first part; and **HARFORD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland, sometimes hereinafter referred to as "Buyer", party of the second part..

NOW THEREFORE, for and in consideration of the respective promises and the covenants as herein contained, and for other good and valuable considerations, the receipt and adequacy of all of which being hereby acknowledged, the parties intending to be legally bound, hereby promise, covenant and agree as follows:

WITNESSETH, that the Seller does hereby bargain and sell unto the Buyer, and the Buyer does hereby purchase from the Seller all of the property situate, lying and being in the Third Election District of Harford County, Maryland, described in and conveyed to Seller by a Deed dated April 28, 2000 from J. Robert Martin, Sr. and Mary M. Martin and by a Deed dated May 3, 2001 from Forest Hill Industrial Airpark, Inc., and respectively recorded among the Land Records of Harford County in Liber C.G.H. No. 3252, folio 510 and in Liber C.G.H. No. 3535, folio 509, and in Liber C.G.H. No. 2998, folio 649, being Parcel 442 on Tax Map 40, on the easterly side of Commerce Road, south of Jarrettsville Road in Forest Hill, Maryland, and being further described as Lot No. Q-4, as shown on the plat entitled: **REVISED FINAL PLAT SECTION II LOTS Q-4 AND N-4 FOREST HILL INDUSTRIAL AIRPARK, INC.**, which plat is recorded among the aforesaid land Records in Plat Book C.G.H. No. 106, folio 34, containing 4.251 acres of land, more or less, hereinafter referred to as the "**Property**", together with the improvements thereon, and all the rights and appurtenances thereto, including the common drive easement as shown on the aforesaid plat, alleys, ways, water privileges, and advantages thereto belonging or in anywise appertaining. The improvements thereon being known as **2213 Commerce Road**.

The purchase price for the Property is **TWO MILLION THREE HUNDRED SIXTY THOUSAND DOLLARS (\$2,360,000)** and shall be paid by Buyer as follows: a check in the amount of **ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$1,700,000.00)** or other payment acceptable to the settlement officer and Seller at the time of settlement which shall take place after the funds for this purchase have been approved by the State of Maryland, through Program Open Space funding. Once approval has been received by the Buyer, settlement shall be held on February 28, 2007, or sooner if agreed to in writing by both parties to this Agreement.

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1 The balance of the purchase price shall be paid as follows: One
2 (1) annual installment of **SIX HUNDRED SIXTY THOUSAND DOLLARS**
3 **(\$660,000.00)** each, payable on February 28, 2008. Said balance
4 of the purchase price unpaid at closing shall be evidenced and
5 secured by a Note in the amount of **SIX HUNDRED SIXTY THOUSAND**
6 **DOLLARS (\$660,000.00)** and bearing interest as hereinafter
7 provided. Such Note shall be executed by the Buyer and delivered
8 to the Seller at the closing and shall provide for payment of
9 principal as aforesaid, together with accrued interest at the
10 rate of Five (5%) percent per annum as provided in the Note. A
11 copy of the form of said Note is attached hereto as ``EXHIBIT-
12 A.``

13 The Buyer's obligation to make payments of the purchase
14 price hereunder and to pay interest on the unpaid balance of the
15 purchase price shall be a general obligation of Harford County,
16 Maryland (the ``County``). The full faith and credit and the
17 taxing power of the County shall be irrevocably pledged to the
18 punctual payment of the purchase price and the interest on the
19 unpaid balance of the purchase price, as and when the same
20 respectfully shall become due and payable.
21

22 The County makes no representations and will not deliver any
23 legal opinions with respect to whether interest on the unpaid
24 balance of the purchase price is exempt from federal or Maryland
25 income tax.
26

27 Settlement shall be held at 220 South Main Street, Bel Air,
28 Maryland 21014, in the Procurement Department Conference Room, or
29 at such other place in Maryland as shall be mutually agreeable to
30 the Seller and Buyer. It is agreed between the parties hereto,
31 that this Agreement is subject to approval by the Harford County
32 Council and the Harford County Board of Estimates at one of its
33 regular Board meetings; and acceptance by Harford County,
34 Maryland. In the event that the Harford County Council and the
35 Harford County Board of Estimates does not approve this
36 Agreement, it shall become null and void.
37

38 This Agreement is contingent upon the Buyer receiving
39 approval from the State of Maryland for funding of this purchase
40 by the State Board of Public Works through Program Open Space
41 Funding. If for any reason this contingency is not satisfied by
42 February 28, 2007, then Buyer may elect to terminate this
43 Agreement.
44

45 And upon payment of the purchase price, a fee simple deed
46 for the Property containing covenants of special warranty and
47 further assurances shall be executed at the Buyer's expense by
48 the Seller, which shall convey the property by good and
49 merchantable title to the Buyer, free of liens and encumbrances;
50 but subject to use and occupancy restrictions of public record
51 that are generally applicable to properties in the immediate
52 neighborhood or the subdivision in which the property is located,
53 publicly recorded easements for public utilities and any other

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easements that may be observed by an inspection of the property.

The deed to any tract of land purchased under a State grant from Program Open Space (POS) shall contain a clause setting forth the following restrictions on its use. It is understood and agreed that the land acquired under a State Grant from Program Open Space may not be converted to any use other than public outdoor recreation and open space use without the prior written approval of the Secretary of Natural Resources and the Secretary of the Department of Budget and Management and the Secretary of the Maryland Department of Planning. Any conversion in land use may be approved only after the local governing body replaces the land with land of at least equivalent area and of equal recreation or open space value. In order for any conversion of land acquired or developed under a State Grant from Program Open Space to occur, the appraised monetary value of land proposed for acquisition shall be equal to or greater than the appraised monetary value of the land to be converted. The Secretaries of Natural Resources, Planning, and Budget and Management, in their sole discretion, shall determine the relative recreation and open space value of the properties, considering the fair market value, usefulness, quality and location of the properties and/or facilities. This clause shall be included in the deed conveying the Property to the Buyer.

Seller authorizes Buyer, its employees, agents or contractors to enter the Property, after reasonable notice, to perform an environmental audit ("Audit"). The Audit, which shall be performed by a qualified environmental consultant, shall be for the purpose of detecting hazardous substances and shall be conducted at Buyer's expense. Seller agrees to cooperate reasonably with the Audit by providing access to the Property and inspection of all documents regarding the Property and compliance with the Environmental Protection Agency or State environmental standards. Also, Buyer may conduct ground water and soil sampling of the Property after reasonable notice. Upon completion of the testing, if any, Buyer agrees to restore the area disturbed by testing to its original condition.

To the best of Seller's knowledge, the Property is free of any waste or debris and is free of all contamination, including (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, (b) any "hazardous substance" as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder, (c) asbestos, (d) underground storage tanks, and (e) any substance or thing the presence of which on the Property is prohibited or regulated by any federal, state or local law or regulation similar to those set forth in this paragraph.

The term "Hazardous Substances", as used in this Agreement

shall mean pollutants, contaminants, toxic or hazardous wastes, or any other substances, the removal of which is required or the use of which is restricted, prohibited or penalized by any ``Environmental Law'', which term shall mean any federal, State or local law or ordinance relating to pollution or protection of the environment. Seller hereby agrees that (i) after the date of this Agreement, no activity will be conducted on the premises by Seller, or to Seller's knowledge, by any other person, that will produce any Hazardous Substance; (ii) the premises will not be used in any manner for the storage of any Hazardous Substances by Seller, or to Seller's knowledge, by any other person; (iii) no portion of the premises will be used as a landfill or a dump by Seller, or to Sellers' knowledge, by any other person; (iv) Sellers will not install any underground tanks of any type; and (v) Seller will not knowingly allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute, a public or private nuisance.

If such Audit, or other inspection, or testing reveals any condition on the property that is unsatisfactory to Buyer in its sole and exclusive determination, Buyer shall give notice to Seller on or before fifteen (15) days from the date of the inspection. Seller shall have twenty (20) days within which to remedy such condition.

On Seller's failure to take remedial action as aforesaid, Buyer, at its sole option, may either extend this Agreement of Sale for a reasonable period of time, to be determined by Buyer, to allow Seller to remedy such hazardous situation, waive such defects and proceed to closing under this agreement, or terminate and rescind the Agreement.

The Property shall be held at the sole risk of Seller until legal title has passed to Buyer, and Seller assumes all loss or damage to the property until settlement. At the settlement, Seller shall deliver possession of the Property in substantially the same condition as existed on the date this Agreement is fully executed. So long as this Agreement is in full force and effect, Seller shall not cause or permit any new lien or encumbrance on the Property.

The Seller represents that (i) there is no litigation threatened or pending affecting the property; (ii) the Seller has fee simple title to the property, free and clear of all liens and encumbrances; (iii) that the Seller has the authority to sell the property; (iv) that the seller is not in bankruptcy and the liabilities of seller do not exceed its assets; (v) there is no pending eminent domain proceeding, or threatened not; and (vi) there are no known building code violations with respect to the property. This paragraph should also require the seller to have all insurance policies concerning the property endorsed to protect the Buyer for the term of the agreement (through the

Settlement).

Taxes and other public charges against the premises shall be apportioned as of the date of settlement, at which time possession shall be given; and the said parties hereto hereby bind themselves, their successors and assigns, for the faithful performance of this Agreement. Cost of all transfer taxes and recordation taxes required by law shall be the responsibility of the Buyer.

Buyer and Seller are required and agree to make full settlement in accordance with the terms of this Agreement and acknowledge that failure to do so constitutes a breach hereof. If Seller fails to make full settlement or is in default due to Seller's failure to comply with the terms, covenants and conditions of this Agreement, Buyer shall be entitled to pursue such rights and remedies as may be available, at law or in equity, including, without limitation, an action for specific performance of this Agreement of Sale and/or monetary damages.

Included in the purchase price are all permanently attached fixtures, including all smoke detectors, in or on the above-described property, as well as certain other now existing items or improvements, which may be considered personal property, included as follows: Synthetic Turf Field, Dasher Board, Scoreboard, Netting, all located in the soccer arena; and the Dehumidification System located in the pool area.

Buyer warrants and represents to Seller that it has not contracted with a broker, agent or finder who is or may be entitled to a commission on account of this Contract. Seller agrees to hereby defend, indemnify, save and hold the Buyer harmless from any claim, liability, commission, cost, or fee which may be payable to any broker, agent or finder with whom the Seller has dealt in connection with this Agreement. The terms of this paragraph shall survive closing.

Seller represents and warrants that the Property is not subject to any lease(s) or license(s), except for a Sublease dated March 15, 2004 by and between Just4Kids Swimming, Inc., Sublessor, Q-4, LLC, Landlord, and Kids First Swim Schools, Inc., Tenant, for the Kids First indoor pool facility with a remaining term of approximately thirty (30) months, which lease the Buyer shall honor. A copy of said Sublease is attached hereto as ``EXHIBIT-B and incorporated herein by reference. Seller shall assign all of its right, title and interest, as well as any deposits and prepaid rent in and to the said Sublease to the Buyer at the time of settlement. The parties hereto understand and agree that the Property is being purchased free of any tenants, other than the said indoor pool facility tenant. Should any other tenant contract(s) or lease(s) exist for the Property, such shall be terminated prior to settlement with no cost to the Buyer.

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1
2 All notices and/or requests required pursuant to this
3 Agreement shall be in writing and shall be deemed to have been
4 properly delivered if sent by certified mail, postage prepaid and
5 addressed as follows:
6

7 To Seller: Lawrence E. Dukes
8 109 E. Jarrettsville Road
9 Forest Hill, MD 21050
10

11 To Buyer: Deborah L. Henderson, Director
12 Department of Procurement
13 Harford County, Maryland
14 220 South Main Street
15 Bel Air, Maryland 21014
16

17 With a copy to: Richard G. Herbig
18 Senior Assistant County Attorney
19 Harford County, Maryland
20 220 South Main Street
21 Bel Air, Maryland 21014
22

23 This shall be the final and entire Agreement between the
24 parties hereto, and neither they nor their Agents shall be bound
25 by any terms, conditions or representations not herein written.
26

27 Time is of the essence of this Agreement.
28

29 WITNESS, in duplicate, the hands and seals of the parties
30 hereto, the day and year first above written.
31

32 WITNESS/ATTEST:

SELLER:

33
34 Q-4, LLC
35
36
37
38

39 By: _____ (SEAL)
40 Lawrence E. Dukes, Member
41
42
43
44

45 By: _____ (SEAL)
46 Gary Miller, Member
47
48

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BUYER:

HARFORD COUNTY, MARYLAND

By: _____ (SEAL)

Deborah L. Henderson, Director
Department of Procurement/
Secretary, Board of Estimates

Approved as to form and legal
_____ day
sufficiency this _____ day of
_____, 2007.
_____, 2007.

Reviewed and concur, this
_____ of

Richard G. Herbig
Senior Assistant County Attorney
& Recreation

Joseph E. Pfaff, Director
Department of Parks

Approved as to financial sufficiency,
this _____ day of _____, 2007.

John R. Scotten, Jr.
Harford County Treasurer

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PROMISSORY NOTE AND AGREEMENT

This Note and Agreement is made this _____ day of _____, 2007, by and between Harford County, Maryland, a body politic of the State of Maryland (the "County"), and Q-4 LLC ("Q-4"), a limited liability company of the State of Maryland.

WHEREAS, Q-4, the owners of Just for Kids, have signed an Agreement of Sale with the County which requires installment payments in February 2008 and February 2009; and

WHEREAS, Section 520 of the Harford County Charter, as amended, allows the County to make contracts for the payment of funds beyond the current fiscal year if authorized by legislative acts; and

WHEREAS, Q-4 and the County desire to execute this Promissory Note to secure payment of the balance of the purchase price.

NOW, THEREFORE, the County agrees to pay to Q-4, the sum of \$660,000.00 (Six Hundred Sixty Thousand Dollars) in February 2008, with accrued interest at the rate of five (5) percent per annum.

And to secure the payments hereunder and as additional consideration for this Notice and Agreement the County hereby irrevocably authorizes any attorney of any court of record to appear on behalf of the County in any such court at any time hereafter, should any amount due hereunder not be paid when due, to confess judgment against the County, without process, in favor of the holder hereof for all such amounts as may be due, owing, and unpaid as at that time, together with all amounts unpaid under this Notice and Agreement, whether or not such amounts are otherwise due as at that time, together with all costs related thereto and reasonable attorney's fee incurred by on or behalf of the holder hereof respect to such actions and prior efforts to collect under this Notice and Agreement, and, further, the County hereby agrees to waive and

waives any and all presentment, demand, notice of demand, and all other process and notice which may be waived legally by, under, or through a confessed judgment notice.

ATTEST:

HARFORD COUNTY, MARYLAND

By: _____ (SEAL)

David R. Craig
County Executive

ATTEST:

Q-4 LLC

By: _____ (SEAL)

Lawrence E. Dukes, Managing Member

Approved as to form and legal
sufficiency this _____ day of
_____, 2007.

Reviewed and concurred this _____
day of _____, 2007.

Richard G. Herbig
County Attorney

Joseph E. Pfaff, Director
Department of Parks and Recreation

Reviewed and concurred this _____
day of _____, 2007.

John R. Scotten, Jr.
Treasurer

COMMERCIAL LEASE

KIDS FIRST SWIM SCHOOLS, INC.

AND

JUST4KIDS SWIMMING, INC.

March 15, 2004

EXHIBIT -B

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THIS SUBLEASE, made this ____th day of March, 2004, by and between Just4Kids Swimming, Inc., herein referred to as "SUBLESSOR", a Maryland corporation, Q-4, LLC, herein referred to as "LANDLORD", and Kids First Swim Schools, Inc., a Maryland corporation, herein referred to as "TENANT". WITNESSETH, that in consideration of the payment of the rent and performance of the covenants and conditions herein set forth, the parties hereto and each of them, for themselves, their personal representatives, successors and assigns, do hereby covenant and agree with the other party as follows:

1.A. **Premises.** The Landlord does hereby lease and demise unto the Tenant and the latter does hereby rent from the former, 6,862 square feet of a commercial building located on Lot Q-4, (the "Property"), approximately 1.3 acres in the Forest Hill Industrial Airpark, Harford County, State of Maryland together with all equipment appurtenant thereto, as indicated on the attached "Exhibit A" and specifically known as 2213 Commerce Road, Forest Hill, MD 21050; i.e.,

a. Facility of approximately 28,500 square feet, portion of which 6,862 square feet (Unit "A") is hereby rented to Tenant by Landlord: office space, party rooms, locker rooms, family changing areas, and equipment room (approximately 3,290 square feet), pool room (approximately 3,572 square feet), paved parking lot and landscaping as per drawing furnished by Landlord and attached hereto.

b. Office space and other rooms (measuring approximately 3,290 square feet) in standard finish per attached floor plan (Exhibit "B") includes:

- (1) two (2) glass storefront entrance doors;
- (2) heat and air conditioning;
- (3) two restrooms (handicapped accessible) with three (3) showers and two (2) on deck, extra toilet, sink and urinal;
- (4) painted drywall;
- (5) carpet and VCT;
- (6) 8' acoustical drop ceiling with 2'x 4' lay-in fluorescent fixtures;
- (7) electrical service per Harford county code;
- (8) one observation window and two (2) pool access doors;

- c. Pool room (measuring approximately 3,572 square feet) per attached floor plan (Exhibit "B") includes :
- (1) Pool room with 54' x 34' pool teaching pool;
 - (2) HVAC and dehumidification system;
 - (3) metal halide lighting;
 - (4) brushed concrete floor;
 - (5) pool heater;
 - (6) electrical service per Harford County code;
 - (7) one (1) glass storefront exit door.

1.B. **Terms and Conditions.** The terms of this Lease are five (5) years, beginning April 18, 2004, and ending sixty (60) months thereafter from the commencement date at the annual rent as follows:

Years 1-5: Seventy-one Thousand Twenty-One Dollars and 70 Cents (\$71,021.70) per year, payable in equal consecutive monthly installments of Five Thousand Nine Hundred Eighteen Dollars and 43 Cents (\$5,918.43) each. Payments are due on the first day of each month during said term in advance, at 2213 Commerce Road, Forest Hill, Maryland, 21050, or at such other address as designated in writing by the Landlord.

The Landlord grants two (2) optional five (5) terms to the Tenant along with this lease. The terms related to annual rental amount will be determined six (6) months prior to the expiration of the current lease. Landlord agrees there will be no base rent increases in the first five (5) years. New terms will be determined by a survey of office space rates in the Forest Hill Airpark and will be the average of said rates.

The following additional conditions apply to this Lease:

a. Tenant shall be responsible to pay a proportionate share of the Property's annual expenses for real estate taxes, Landlord's property insurance and common area maintenance expenses. Tenant's proportionate share is defined as twenty-four percent (24%) of the Property and shall be paid by Tenant to Landlord as additional rental.

b. At the time of signing the Lease, the amount of Five Thousand Nine Hundred Eighteen Dollars and 43 Cents (\$5,918.43), one (1) month's rent, will be paid by Tenant to Landlord as a security deposit. Said amount will be returned upon expiration of Lease with property surrendered in good condition, less any improvements and repairs made at Landlord's expense, excepting normal wear and tear.

The Tenant shall give the Landlord ninety (90) days notice in writing before the expiration date of intention not to renew this Lease. Should the Tenant give said notice, this Lease shall terminate and come to an end at the conclusion of the original lease term as previously defined.

2. Payment of Rent. Said Tenant hereby covenants with said Landlord to pay the rent as aforesaid without any previous demand therefore, and in case of non-payment continuing for ten (10) days after same is payable or other charges provided herein which shall constitute additional rent due by the Tenant to the Landlord, then the Tenant shall pay the Landlord a late charge of One and One-Half Percent (1-1/2%) per month, accruing from the date that said payments of rent and additional rent actually become due and payable by the Tenant or in case Tenant shall abandon or vacate said leased premises, the Landlord shall have the right to enter the same and to distrain for rent, also to re-let said premises for any unexpired balance of the term, and to collect the rent therefore. In the event of such re-letting, it shall be on such terms, conditions and rental as the Landlord may deem proper, and the proceeds that may be collected for the same, less the expense of re-letting, shall be applied to the rental to be paid by the Tenant, and the latter shall be liable for any balance that may be due under this Lease.

3. Assignment. Tenant agrees that it will not assign or sublet this Lease, in whole or in part, without obtaining the Landlord's written consent. The Landlord agrees not to unreasonably withhold said consent. Use will be for any business use of Kids First Swim Schools, Inc. or its affiliates which shall conform to the Harford County zoning restrictions and no other. Property is zoned GI (Harford County designation for General Industrial) with such facility suitable for intended use.

4. Surrender. The Tenant agrees during the term of said tenancy to keep and at the expiration of said tenancy to give up said premises in as good order and condition as same are received, the reasonable and actual wear and tear being excepted. If the Tenant shall fail to surrender possession of the premises immediately upon the expiration of the term of this Lease or the option extension thereof if exercised, the Tenant agrees that all obligations of the Tenant and all rights of the Landlord applicable during the term of this Lease shall be equally applicable during

such period of subsequent occupancy, whether or not a month-to-month tenancy shall have been created. In the event that Tenant holds over as aforesaid, the Tenant shall pay the Landlord as monthly rental a sum equal to 150% of the current monthly rental.

5. Broker. There is no broker involved in this transaction. Each of the parties represents and warrants that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease and each of the parties agrees to indemnify and save harmless the other party from and against all liabilities arising from any such claim including, without limitations, the cost of attorney's fees in connection therewith.

6. Repairs. Tenant agrees to make all repairs to the interior of said premises and to keep said demised premises in good condition and repair at its own cost and expense, to include the ordinary repair and servicing of the heating and air conditioning system, dehumidification, pool filtering, Myox system and plumbing system and parts related thereto. During the lease term, if structural repairs become necessary (including the parking lot), the Tenant is required to notify the Landlord in writing of the need for such repairs. The Landlord is required to act expeditiously to make needed repairs, and will bear their cost. However, if the repairs are the result of the Tenant's neglectful, careless, or malicious behavior, the Tenant will bear the cost.

7. Alterations. Tenant agrees that it will not at any time make any alterations or remodeling in or about said premises without first securing the written consent of the Landlord, whose consent will not be unreasonably withheld, and said alterations and remodeling when so allowed by the Landlord shall be made at the Tenant's expense.

8. Bankruptcy. It is further agreed by said Tenant that in case the Tenant shall be adjudicated bankrupt or in case a receiver shall be appointed for their property, or if the Tenant shall make an assignment for the benefit of creditors, then in any of said events, the Landlord may, at its option, terminate this Lease.

9. **Fire Insurance.** The Tenant agrees to do nothing to contravene the policy or policies of fire insurance by the Landlord on said property or to cause any increase in the rates of fire insurance for said Premises or property; in the event an increase in the rates of fire insurance is caused by an act on the part of the Tenant, then said increase in the fire insurance premium shall be paid by the said Tenant promptly on demand by the Landlord and the Tenant agrees to pay said additional premium as rent during each year of this Lease.

10. **Fixtures.** It is agreed that all permanent improvements, alterations and repairs other than business fixtures which may be put on said Premises shall become the property of the Landlord at the expiration or termination of this Lease; except when said permanent improvements, alterations and repairs may be removed without damage to the Premises.

11. **Liability and Indemnification.** The Tenant agrees to maintain in full force and effect during the original term and the renewal term of this Lease, at its own cost and expense, a policy of insurance covering the risks generally incurred in public liability insurance policies and also referred to as "owner landlord-tenant" liability in the sum of the following amounts:

Liability	Any One Occurrence \$1,000,000
Personal & Advertising Injury	Any One Person or Occurrence \$100,000
Medical Expense	Any One Person \$5,000
Fire Legal Liability	Any One Fire or Explosion \$50,000
Products/Completed Operations	Aggregate \$1,000,000
General Aggregate	\$1,000,000

The Tenant agrees to pay said premium when due and payable and upon failure to do so, the Landlord and Sublessor shall have the right (but need not exercise this right) to pay said premium and to collect the same from the Tenant as additional rent hereunder. The Tenant further agrees to have said insurance policy endorsed to protect the interest of the Landlord and Sublessor and to furnish the Landlord with a certificate of insurance naming Landlord and Sublessor additional insured within ten (10) days after Tenant has executed this Lease. Tenant hereby agrees to indemnify and hold Landlord and Sublessor harmless from and against all costs, damages, claims, liabilities and expenses including attorney's fees) as the result of loss of life, personal injury and/or damage to property arising from or out of the occupancy or use by the Tenant of the Premises, or any part hereof, occasioned wholly or in part by the act or omission of the Tenant, their agents or employees and customers, etc. The Landlord and Sublessor shall not be responsible or liable to the Tenant, or to their agents, employees and customers or invitees, for any injury or damage to the Tenant or their property, except where such loss or damage arises from the willful misconduct or negligence of the Landlord and Sublessor, its agents, servants or employees.

12 Termination It is further agreed and covenanted by and between the parties hereto that in case of a breach of any of the covenants herein specified on the part of the Tenant and continuance of said breach for a period of ten (10) days after receipt of notification by the Landlord by certified mail to the Tenant, the Landlord shall have the right to terminate and cancel said Lease and take immediate possession of the Premises, and to take summary proceedings against the said Tenant for the recovery thereof as provided by law, in the event said Tenant does not voluntarily relinquish said Premises after due notice is given to it.

13. Maintenance. Tenant agrees to be responsible for all trash and waste removal and dispose of in proper container, which space shall be provided and screened by Landlord in accordance with restrictions and covenants of the Forest Hill Industrial Airpark. Tenant shall keep all sidewalks of the demised premises free from rubbish and snow and ice and Tenant further agrees said sidewalks to be used for ingress and egress to and from the demised premises

only. Tenant also agrees to maintain a neat and presentable appearance compatible with the balance of the Forest Hill Industrial Airpark. Trash removal will be provided and paid by Tenant.

14. Net Lease. The Tenant acknowledges that it leases the Premises and the improvements on a net basis from the Landlord. Specifically, Tenant is to reimburse Landlord for its prorated share of the expenses for annual real property taxes no later than December 31 of the pertinent tax year and for its prorated share of the annual expenses for Landlord's property insurance cost and common area maintenance costs within thirty (30) days from receipt of invoice for same.

15. Abatement. Should the Premises be damaged by fire or unavoidable accident, but not to such an extent as to render the same untenantable, the Landlord shall restore the Premise within seventy-five (75) days and there shall be no abatement of rent. Should said premises be partially damaged or injured by any of the aforesaid causes to such an extent as to render said Premises untenantable, Landlord shall restore said Premises as promptly as possible and the rent shall abate proportionately to the untenantability of said Premises until the premises are made fit for occupancy, after which time the full rent reserved in this Lease shall continue to be payable. Should the Premises become entirely untenantable by any of the aforementioned causes, then this Lease shall thereupon become null and void and all liability of the Tenant shall terminate upon payment of all rent due and payable to the date of such damage.

16. Compliance. The Tenant agrees to comply with and promptly perform all lawful notices or demands of any duly constituted authorities, including the inspector of Buildings and Commissioner of Health with respect to the proper use or occupancy or maintenance of the premises by the Tenant and to comply with all rules, ordinances and regulations of the County of Harford and the State of Maryland, or any department thereof governing the Use and/or occupancy of said property.

17. **Additional Rent.** Said Tenant agrees that it will, at its own expense, promptly comply with all laws, statutes, ordinances, orders and regulations promulgated or enacted by the United States, State of Maryland, County of Harford; and the various departments and agencies thereof; the Association of Fire Underwriters of the County of Harford, whether now in being or hereafter put into being, which shall impose any duty upon the Tenant with respect to the Premises leased to the Tenant or the use thereof. Should the Tenant fail to comply with said notice, order, demand, etc., within ten (10) days after receipt in writing, provided such compliance law, statutes, ordinances, orders or regulations and Landlord shall be entitled to full and complete reimbursement by the Tenant, the same to be payable as additional rent and the Landlord shall be entitled to all rights to collect the same as in the event of non-payment.

Said Tenant has also agreed to pay to the Sublessor as additional rent for the first five (5) year term, for the rights to manage the business currently operating as Just4Kids Swimming, Inc. and trading as Kids First Swim Schools, Inc., as follows:

Years 1-5: Thirty-Seven Thousand Seven Hundred Forty-One Dollars and NO Cents (\$37,741.00) per year, payable in equal consecutive monthly installments of Three Thousand One Hundred Forty-Five Dollars and 08 Cents (\$3,145.08) each month. Payments are due on the first day of each month during said term in advance, payable to Just4Kids Swimming, Inc. at 2213 Commerce Road, Forest Hill, Maryland, 21050, or at such other address as designated in writing.

The Tenant agrees to use its own brand and to hold harmless Just4Kids Swimming, Inc. If Tenant fails to make payment continuing for ten (10) days after same is payable or other charges provided herein which shall constitute additional rent due by the Tenant to the Sublessor, then the Tenant shall pay the Sublessor a late charge of One and One-Half Percent (1-1/2%) per month, accruing from the date that said payments of rent and additional rent actually become due and payable by the Tenant or in case Tenant shall abandon or vacate said leased premises, the Landlord shall have the right to enter the same and to distrain for rent, also to re-let said premises for any unexpired balance of the term, and to collect the rent therefore. In the event of such re-letting, it shall be on such terms, conditions and rental as the Landlord may deem proper, and the proceeds that may be collected for the same, less the expense of re-letting, shall be applied to the rental to be paid by the Tenant, and the latter shall be liable for any balance that may be due under this Lease.

If the Tenant shall become in arrears thirty (30) days, they will be in default and the business will revert back to Just4Kids Swimming, Inc., the Sublessor.

16. **Inspection.** The Landlord, with prior notice, shall have the right to inspect the Premises at all reasonable times and to place rent notices or signs upon the same during the last sixty (60) days prior to the end of this Lease.

19. **Condemnation.** It is agreed that if the whole or any part of the Premises shall be acquired, taken or condemned by any United States, State, local or by any other competent authority for any public or quasi-public use or purpose, then in any event, this Lease and the original term thereof and the right to renew and any renewal thereof, shall cease and expire as of the date when such possession shall be acquired by or title be vested in said authority. No apportionment shall be made to the Tenant of the award or of any other compensation paid to the Landlord, if any, by reason of such acquisition, taking or condemnation. The Tenant shall immediately move from said Premises and shall pay all rent and other charges pro-rated or accrued to the date of said removal.

20. **Utilities, Water, Sewer, Etc.** The Landlord agrees to furnish a heating system to the entire building, as well as electrical, water and sewer systems and service. Tenant is responsible for payment of all utilities and services including but not limited to electricity, light, heat or power, telephone, gas, water, sewer and other charges of utilities which may become due and payable during the term of this Lease for premises leased. Landlord is responsible for payment of public water and sewer hook-up fees to the facility. The parties agree that the Premises shall not be used for the purpose of storage or sale of any kind of alcoholic beverages.

21. **Signage.** Tenant shall not place or permit any signs, lights, awnings, or poles in or about the Premises without the prior written consent of the Landlord, and that, such consent shall not be unreasonably withheld, and in the event that such consent is given the Tenant agrees to pay all costs in connection thereof including any minor privilege or other tax therefore, and upon surrendering of the premises to remove same and restore the premises to its original condition. Tenant agrees they will do nothing to the exterior of the premises to change the architecture, paint or appearance of the building or surrounding grounds without consent of the Landlord in writing.

22. **Arbitration.** All claims, disputes, and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by the Landlord, Sublessor, Tenant, and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein. This agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties hereto shall be specifically enforceable under the prevailing arbitration law.

23. **Limitations.** In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

24. **Award of Arbitrator** The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

25. **Parking.** The Tenant agrees to cause all vehicles operated by its officers and employees to be parked on the lot designated by said Landlord.

26. **Pets.** No pets or animals of any kind shall be brought into or kept in or about the Premises, except that seeing eye dogs are permitted.

27. **Rules and Regulations.** The Landlord reserves the right to make such reasonable rules and regulations, uniformly applicable to all tenants of the Forest Hill Industrial Airpark, as in the judgment of the Landlord may from time to time be determined for the safety, care, cleanliness, appearance and welfare of all tenants and other owners within said industrial park, and Tenant covenants that it will observe and comply with all such rules and regulations. Where consent of Landlord is required, such consent shall not unreasonably be withheld.

28. **Successors and Assigns.** The covenants, terms and conditions herein contained shall be applicable to and bind respectively, the Tenant and the Landlord, their and its heirs, administrators, personal representatives, successors, and assigns.

29. **Notices** All notices, demands, requests, approvals and Consents (Collectively referred to as "Notices") required or permitted under this Lease shall be in writing and shall be either (i) personally delivered with signed receipt, or (ii) sent by first class certified mail, postage prepaid, and addressed (i) if to Q-4, LLC, at 2213 Commerce Road, Forest Hill, MD 21050, or (ii) if to Tenant, at the Leased Premises. All notices personally delivered shall conclusively be deemed delivered at the time of such delivery. All Notices sent by certified mail or, all conclusively be deemed delivered two (2) days after the deposit thereof in the United States mails. Any party may designate a change of address by notice to the other party, given at least ten (10) days before such change of address' is to become effective.

30. **Warranties.** If Tenant is a corporation, the persons executing this Lease on behalf of Tenant hereby covenant and warrant that: Tenant is a duly constituted corporation qualified to do business in the State of Maryland; all Tenant's franchises and corporate taxes have been paid to date; all future forms, reports, and other documents necessary for Tenant to comply with applicable laws will be filed by Tenant when due; and such persons are duly authorized by the board of directors of such corporation to execute and deliver this Lease on behalf of the corporation.

31. **Final Agreement.** This agreement contains the full and final and exclusive agreement among the parties with respect to the subject matter herein. There are no other oral agreements or representations between the parties that are not incorporated herein. Any modifications, changes or alterations to the terms and conditions herein contained shall be in writing and signed by each of the parties hereto.

32. **Effectiveness of the Lease** The submission of this Lease for examination does not constitute a reservation of or option for the premises and this Lease becomes effective as a lease only upon execution and delivery thereof by both Landlord and Tenant.

Commercial Lease
Just4Kids Swimming, Inc.

March, 2004
Confidential

AS WITNESS, the hand and seal of said Landlord.

TEST:

Q-4, LLC.
Landlord

By: [Signature]

By: [Signature]

Commercial Lease
Just4Kids Swimming, Inc.

March, 2004
Confidential

33. Headings. The headings are for the convenience on the parties.

AS WITNESS, the hand and seal of said ~~Lessor~~ ^{Sublessor} WITNESS also the signature of said Tenant.

TEST:

Just4KidsSwimming, Inc.

~~Lessor~~ Sublessor

Cynthia L. Hartman

By: [Signature]

Kids First Swim Schools, Inc.
Tenant

By: [Signature]

Title: Owner